Aug 11, 2008
Aug 11 2008
FILED
Aug 11, 2008
AUG 11 2008 YM
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

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8-4-08

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Banks VS ABraham, Superintendent of EMCH

Civil No: 08cv2468

Notice of Filing

The Petitioner has cause to be filed one original copy of the following ANNEXED To the NOTICE of Filing, sent via U.S. postal Mail from Lehmen Dr. P.O. Box 31 Chester, Illinois.....

Certificate of Service

THE PETITIONER has cause to be filed one original copy of the following Notice ANNEXED to the Certificate of service, sent via U.S. postal Mail from Lehmen Dr. P.O. Box 31, chester, IL 62233

Respectfully submitted

8-4-08

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BANKS VS ABRAHAM, SUPERINTENDENT OF EMCH

CIVIL NO: 08CV2468

RELIEF FROM JUDGMENT OR ORDER PURSUANT TO FEDERAL RULE(S) OF CIVIL PROCEDURE, RULE 60(a)

NOW COMES LARRY M. BANKS IN WANT OF COUNSEL, AND SEEK RELIEF FROM JUDGMENT OR ORDER, PURSUANT TO FEDERAL RULE(S) OF CIVIL PROCEDURE, RULE 60(a)

ARGUMENT

THE PETITIONER STATE(S) THAT ON JULY 24, 2008 HONORABLE WILLIAM J. HIBBLER, PLACE A DOCKET ENTRY TEXT: BASE ON THE PETITIONER "PETITIONER'S MOTION TO CORRECT JUDGMENT PURSUANT TO FED RULE OF CIVIL PROCEDURE, RULE 60(b)(8) AND MOTION FOR RELIEF FROM JUDGMENT OR ORDER, PURSUANT TO RULE 60(b)(2)(3)(6)(9).

THE PETITIONER USE MATTHEW VS EVATT, 105 F.3d 907 AS CONTROLING CASE LAW, THE Petitioner states: To satisfy Exhaustion Requirement, habeas petitioner Must fairly present claim to state's highest court 28 U.S.C. §2254 (b, c).

THE PETITIONER STATES HE challenge the STATES JURISDICTION IN THE State writ OF HABEAS CORPUS, PURSUANT to 735 ILCS 5/10-101, SUCH WRIT OF HABEAS CORPUS AFFORDS A STATE PETITIONER the RIGHT to ADDRESS CONSTITUTIONAL ISSUE(S).

The PETITIONER raised a federal QUESTION UNDER Federal JURISDICTION, which the court has JURISDICTION to ANSWER pursuant to 28 U.S.C. §§ 2241 (c) (3), such CONSTITUTIONAL QUESTION WAS SECURED IN THE STATE WRIT OF HABEAS CORPUS, PURSUANT to 735 ILCS 5/10-101, and the ILLINOIS CONSTITUTION of 1970, Article 1 Section 9....

THE PETITIONER STATES: THE EXHAUSTION REQUIREMENT, Though NOT JURISDICTIONAL), SEE, Cranberry VS Greer, 481 U.S. 129, 131, Such WRIT WAS Brought pursuant to 28 U.S.C. §2241 (c)(3)...

THE CONGRESS INTENT FOR THE TWO STATUTES ARE DIFFERNT IN NATURE, BECAUSE ONE HAS A EXHAUSTION REQUIRMENT, 28 U.S.C. 2254 AND 2241 DOESN'T, PETITIONER RAISED THE STATUTE 28 U.S.C. 2241, SUCH STATUTE WAS MISCONSTRUDE HAS 28 U.S.C. 2254.....

PETITIONER STATES: HOWEVER, THE EXHAUSTION REQUIRMENT FOR CLAIMS NOT FAIRLY PRESENTED TO THE STATE'S HIGHEST COURT IS TECHICALLY MET WHEN EXHAUSTION IS UNCONDITIONALLY WAIVED BY THE STATE, SWEEZY VS CARRISON, 694 F.2d 331, 331 (4th CIR 1982).

PETITIONER CITES HE RAISED THE ISSUE(S) TO THE "STATE COURT" IN THE WRIT OF HABEAS CORPUS TO COOK COUNTY CRIMINAL DIVISION IN CASE NO. 06CR 0566601, AND TO THE SUPREME COURT, SUCH ISSUE(S) OF JURISDICTION OF RAISED SUCH AS THE CHARGES BEING NOLLE PROSEQUI, AND BROUGHT BACK WITHOUT A MOTION TO VACATE, SUCH ISSUE(S) WERE RES-JUDICATA AND COLLATERAL ESTOPPEL, AND THE STATE WAS BARRED FROM BRING CHARGE(S), SO THE COURT LACK JURISDICTION OVER THE PERSON AND JURISDICTION OVER THE SUBJECT MATTER, SUCH ISSUE(S) WERE RAISED....

SEE George VS Angelone, 100 F.3d 353, 363 (4th cir, 1996), A claim that has not been presented to the highest state court Nevertheless may be Treated as exhausted if it is clear that the claim would be procedurally defaulted under state law if petitioner attempted to raise it at this Juncture, This issue was raise, and the state court Refused to grant Relief, when Such Relief is in the STATUTE, SEE: 735 ILCS 5/10-101, ILLINOIS CONSTITUTION OF 1970, Article 1 Section 9.....

PETITIONER STATES: Fed Rule Civil procedural, Rule 60(a) Allows the court to correct a Judgment or order pending appeal, The PETITIONER cites 28 U.S.C. ss 2241 (a)(c) grant a Remedy For preTrial Detainee's Who are lockup in custody of the State forum, who haven't been convicted, but who are in custody, The PETITIONER States The Court have the power to hearing case For Reason(s) of Denial of Speedy Trial, and Double Jeopardy, Such constitutional issue(s) Were pleaded in the petitioner writ pursuant to 2241 (c)(3)

COURT STATMENT

PETITIONER ARGUES IN this MOTION that he has EXhausted his State Remedies, because he filed a petition for writ of habeas corpus to Illinois Supreme court, which was denied. The illinois Remedy of habeas corpus is a very narrow Remedy. SEE: Fairelath VS Sternes, 367 Ill, App 3d 123, 125, (2006).

The Illinois Appellate court explain in Fairelath,

The language doesn't Applie to the PETITIONER, because HE'S a pre-Trial Detainee, AND NOT A prisioner, SEE: Illinois constitution of 1970, Article 1 SECTION 9,

controling case law Silverman VS Barry, 727 F. 2d 1121 (D.C. cir 1984) in which Judge Bork held that "Sensitivity and the notion of localism alone do not provide a principled rationale for abstention where federal Jurisdiction admittedly exist. Federal courts routinely decide local matters of great sensitivity and we are not convinced that abstention from a federal question case may be based on this rationale," Id at 1124, N.4.

EVEN THE FEDERAL WRIT OF HABEAS CORPUS does not require the Imposition of That requirement would irreparably harm the claim being made. IN Braden vs 30th Judicial circuit court, 410 U.S. 484, a case IN MANY Ways Similar to this MINE, the Supreme court held habeas was Available ON the QUESTION OF a denial of a speedy Trial even though state remedies had not been Exhausted.

PETITIONER cite Mr. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and Mr. JUSTICE POWELL concur, dissenting. Today the court overrules Ahrens vs clark, 335 U.S. 188 (1948), which construed the legislative intent of Congress in enacting the lineal predecessor of 28 U.S.C. "2241, Although consideration of 'convenience' may support the result reached in this case, these considerations are, in this context, appropriate for congress, Not this court, to make. Congress has not legislatively overruled Ahrens, and Subsequent 'developments' are simply irrelevant to the Judicial task of ascertaining the legislative intent of Congress in providing, in 1867, that federal district court may issue writ of HABEAS CORPUS

'Within their respective jurisdictions' The court, however, NOT only accomplishes a feat of Judicial prestidigitation but, without dicussion or analysis, explicity ENtends the scope of Peyton VS Rowe, 391 U.S. 54, (1968), and implicitly rejects Ex parte Royall, 117 U.S. 241 (1886)

THE PETITIONER raiSED a Sixth AMENDMENT Violation, the court cited in 93 S.Ct 1123, PETITIONER filed this petition alleging federal jurisdiction pursuant to 28 U.S.C. §§ 2241, §2254 Section §2254 pertains only to a prisoner in custody pursuant to a Judgment OF CONVICTION OF a State court; IN the CONTEXT OF the Attempt to assert a Right to Speedy Trial, there is Simply NO §2254 Trap to 'ENSnare' petitioner, such as the court below felt existed. The issue here is whether habeas corpus is WARRANTED under §§ 2241(C)(3); that Section empowers district courts to issue the writ, inter alia, before a Judgment is rendered in a Criminal proceeding. It is in the context of an Application for a State prisoner prior to any Trial in a State court that the effect of instant decision must be Analyzed.....

Smith V6 Hooey, 393 U.S. 374, (1969), State(s) Supra, Their is also No doubt that such a prisioner may petition a Federal district court for a Writ of Habeas corpus prior to Trial. See: 28 U.S.C. §2241(c)(3). What the court here disregards, however, is almost a century of decisions of this court to the effect that federal habeas corpus for State prisoners, prior to conviction, should not be granted absent Truly Extraordinary circumstances.

The petitioner pleaded Extraordinary circumstances, in the Writ §2241(c)3), when "State Actors" committed a criminal offense by Removing the original Affidavit of Complaint, After the complaint, was Nolle prosequi. The court lacked Jurisdiction to continue prosecution, due to the state Not filing a Motion to vacate, such Reinstating the charge(s), when No charge(s) were left is A violation of Petitioner 14th Amendment, Rights, and the prosecutor was Barred under Res-Judicata, and collateral Estoppel, from bring the charges back, such Actions of The prosecutor has in Bad-Faith For the purpose of harassment, See:

People vs DeBlieck, 537 N.E.2d 388, states, It has been held that a prosecutor's statutory Authority to prosecute impliedly confers Authority to Nol-pros a charge when, in his judgment, the prosecution should not continue. (people vs Verstat (1983), 118 Ill. App. 3d 90, 104, 67 Ill. Dec. 691, 444 N.E.2d 1374, see Also people vs Matuck (1988), 174 Ill. App. 3d 592, 593, 124 Ill. Dec. 811, 528 N.E.2d 1102.) A Nolle prosequi is the formal entry of record by the prosecuting attorney by which he declares that he is unwilling to prosecute a case. (21 Am. Jur. 2d criminal Law §512 (1981)

" Where, in a criminal proceeding, the prosecuting attorney causes the entrance of an unconditional nolle prosequi or a dismissal of the "Complaint" at one term of court, the proceeding is terminated, and the same complaint cannot be reinstated at a subsequent term and prosecution thereon resumed.

The Nolle prosequi AND SOL are TWO different proceedings, due to A information Being filed, the prosecution is Being prosued in BAD-Faith For the purpose of harassment, Such circumstances warrant

Extraordinary Circumstances.....

THE Court STATE(S) PETITIONERS filing of a State petition For a writ of habeas corpus doesn't NOT constitute full exhaustion because as the court states in it May 8c, 2008 order, petitioner still has available lower state court remedies, particularly direct review, if his trial not resultin ons acquittal

Control case law MATTHEW, 105 F.3d 907, state(s): To satisfy exhaustion requirement, habeas petitioner must fairly present claims to state's highest court.

Granberry Vs Greer, 481 U.S. 129, 131, (1987), states, The Exhaustion requirement though not jurisdictional, is a policy, which the court have adopted through comity, due to the Extraordinary circumstances Petitioner brought Forth A writ pursuant to 28 U.S.C. ss 2241 (c)(3).....

THE Petitioner has suffered irreparable injuries, which has Damaged his state criminal case, and the state forum

has allowed for the injustice to go unheard, such actions have placed the petitioner without a Remedy to address the constitutional violate(s), due to the "State Actor(s)" acting in BAD-Faith with Malice intent for the purpose to harass, the PETITIONER....

Relief Sought

PETITIONER STATE(S) Rule 60 (a) grant the petitioner, Relief from Judgment or order, the language is stated; During the pendency of an appeal, such Mistakes may be so corrected before the Appeal is docketed in the Appending court, and thereafter while the Appeal is pending may be so corrected with leave of the Appellate court. IN otherwise the petitioner ASK the court to Ajudge the petition on the Merit, FACTS, AND Law

Respectfully submitted